1952. File No. O.S.S.C. Exam. 52

Legal Department

A BRANCH p.6(6)

Subject:—Opinions under the Bombay Secondary School Certificate Examination Act 1948

File No. O.S.S.C. Exam. 52

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C O N T E N T S.

Legal Department File No. C. S.S.C.Exam / 52

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		Opinions under the B'bay Secondary School Certificate Examination Act, 1946.	
1.	C.No. 4228/19-3-52	Whether under the existing provisions of the Act, the Secondary School Certificate Examination Board can take additional work of conducting examination in Hindi for Govt. servants and if not whether it will be legally feasible to amend the Act, opinion by.	1-2
2.	C.No. 8522/21-5-52	Question whether the proposal of the S.S.C.Board, to charge an amount annual registration fee to be Schools in respect of supply of booklets regard ng the courses of studies, the S.S.C.Exam. Regulations, the and bas- lists of recognised with high Schools etc., On the analogy of the fee levied by the B'bay University, would be legally feasible. (Pl. see R.L.A.'s 11418 dt. 10-7-52)	3-4
3.	C.No. 11418/19-7-52	Question regarding framing regulations by the S.S.C.Board under sec. 26(1) of the Act for the purposes of levying consolidated charge for all printed material supplied to the Schools. Amendment to the	5-6
4.	C.No. 13 19/16-8-52	Retaining of marks to 35% of the giving condonation marks. Replacing of statement of marks already given by a fresh one raising the marks in the subject as subjects of condonation to 35% in each case. Question whether any transitory regulation will be necessary to give retrospective effect to the practice since statements of marks already issued are proposed to be replaced by fresh ones.	7-8
5.	C.No. 18376/4-11-52	Question whether the view that the member of the S.S.C. Board vacates his seat as soon as the resignation from him is received by the Chairman and it would not be necessary to notify the fact the resignation act would it be necessary to acknowledge it as to inform the member about acceptance, is correct?	9-10.

Date 20/6

LEGAL DEPARTMENT.

The question for consideration is whether under the existing provisions of the Bombay Secondary School Certificate Examination Act, 1945, the Secondary School Certificate Examination Board can take additional work of conducting examinations in Hindi for Government as wants and if not, whether it will be legally feasible to amend the Act suitably.

2. It will be seen from the preamble and the provisions of the Act that the Board is a statutory corporation established to conduct a particular examination i.e. the Secondary School Certificate Examination. The proposed examination, the syllabus for which will be different, is a departmental examination for those who are in Government service and most of whom may have already passed the Secondary School Certificate Examination for its equivalent or higher examination. Statutory functions of the Board are laid down in the Act and it will not be within the statutory functions of the Board to conduct the proposed examination in Hindi for Government servants. Also, it will not be feasible to amend the Act to empower the Board to conduct separate examinations in Hindi for Government servants as such provisions would not be consistent with the scheme of the Act.

3. However there is no legal objection to entrusting to the Board the function of holding the proposed examinations by an executive order. It would not be illegal for the Board to undertake non-statutory functions, so long as it does not utilise the statutory fund placed at its disposal. The Hindi examinations would be non-statutory and recognised for departmental purposes. The Board can be asked by executive orders to conduct such examinations as an activity non-connected with its statutory functions under the Act.

Sd/-J.R.Dhuresdhar.

19-3

O.O. Additional Secretary to Government.

U.O. to P. & G.D.No. 4228, dated the 19th March 1952.

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Office of the P.L.A.

Under section 15(e) of the S.S.C. Examination Act, 1946, the S.S.C.Examination Board has the power to fix, demand and receive such fees and other charges as may be prescribed. "Prescribed" has been defined in section 2(f) to mean prescribed by regulations made by the Board under this Act. Section 6(2)(g) provides that in particular and without prejudice to the generality of the powers given by sub-section (1) the regulations may provide for all or any of the following matters, the relevant matter being the fixing of fees and charges in respect of the Examination. It follows, therefore, that it would be competent to the Board to fix, demand and receive fees or charges in respect of the Examination by which is meant the S.S.C.Examination, provided of course regulations for that purpose are framed. It appears from the letter of the Secretary, S.S.C.Examination Board, that the printed material which is supplied to the schools is concerned with the regulation and arrangements of the Examination. The service so supplied by supplying printed material can, therefore, be treated as a service in respect of the Examination, and any charges or fees levied therefo would be in respect of the examination. By the expression "in respect of" is meant with reference to, as relates to, or as regards. That being so, it would be competent under section 26(2)(g) and also under the general powers given by sub-section (1) of section 25 to frame regulations for the purpose of levying some limited charge for all the printed material supplied to the schools. To that purpose registration of the schools is not necessary, and a scheme of registration as such would not be in consonance with the other provisions of the Act and might lead to unnecessary complications.

Sd/-P.N.Lal

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L.C Remembrancer of Legal Affairs.

S.A.K. 16-5

Ur. to L.S.G.& I.E.D.No. 8522, dated 21st May 1952

Bombay Secondary School Certificate Examination Act, 1948.

A.G.A.'s opinion No. 8522, dated 21-5-1952

In his letter opinion No. 8522 dated 21-5-1952, the A.G.A. opined that it would be competent under section 26(2)(g) and also under the general powers given by sub-section (1) of section 26 to frame regulations for the purposes of levying consolidated charges for all the printed material supplied to the schools. The Secretary, Secondary School Certificate Examination Board, has raised the question whether the Board can add a further condition and a regulation 25(3)(x) of the Bombay Secondary School Certificate Examination Regulations, 1950, requiring schools eligible for sending up candidates for the Secondary School Certificate Examination to pay a fee of Rs. 10/- per year. A.G.A. is requested to advise whether such regulation would be feasible.

As stated by the A.G.A. in his aforesaid last opinion, regulations can be framed under section 26(3)(g) fixing fees and charges in respect of the examination. There is no provision either in the Act or under the Rules providing for power of the Board to levy any charge or fee for the eligibility of schools for sending up candidates for the Secondary School Certificate Examination. Regulation 24 of the Secondary School Certificate Examination Regulations, 1950, prescribes conditions for ~~24 of the Secondary School Certificate~~ the eligibility of schools to send up candidates for the examination. Consequently this regulation cannot be amended for the purpose of levying fees for the supply of printed materials to the schools. A separate regulation will have, therefore, to be made for the purpose.

Sd/-P.H.Lad
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O.C. Remembrancer of Legal Affairs.

A.R. to A.D.N. 11418, dated the 10th July 1952.

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Office of the R.A.

Statement of Marks
Bombay U.B.C. Exam.
Regulations, 1950.

Regulation 37, clauses (1) and (2) of the Bombay U.B.C. Examination Regulations, 1950, empower the Board to condone the deficiency upto a prescribed extent in the marks obtained by a candidate in the circumstances mentioned therein. To condone means to forgive or overlook (Concise Oxford Dictionary). The Regulation as framed does not expressly empower the Board to make up the deficiency by raising the marks; but the raising of marks is one of the ways of condoning the deficiency. Consequently, the power to raise the mak marks appears to be implied in condonati n . Although it would have been better to have a regulation expressly giving power to the Board to condone the deficiency by raising the marks under certain circumstances, it appears that such regulation cannot be made retrospectively for no subordinate legislation in the absence of the express powers under the statute can be made retrospectively. Consequently, if a regulation is now made empowering the Board to condone the deficiency by raising the marks, the practice followed by the Board since October 1951 would be open to question. In these circumstances, it appears expedient to follow the practice which has been set up ne since October 1951, even in respect of the examinations held by the Board in March 1949, March 1950 and March 1951 instead of making a regulation. It is for the administrative Department to decide whether it would be expedient to adopt this practice in cases where the marks have already been declared and published.

Sd/- P.H.Lad
16-8

O.S. Remembrancer of Legal Affairs.

U.O. to F.D.No. 13413, dated the 16th August 1952.

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Office of the Board.

The notice of resignation is to be given under section 13 of the Secondary School Certificate Examination Act, 1942, to the Chairman of the Board, and not to Government. In the present case the notice was given to Government by Chri Perve but as a copy of it was endorsed to the Chairman and as the Chairman has already acted upon its this defect in the notice may be deemed to have been cured; and there would be no objection to fill the vacancy. It would not be necessary to inform Chri Perve that his resignation has been accepted; but his letter of resignation may be acknowledged.

Sd/-P.N.Lad
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Asstt. Secretary (Legal Affairs).

U.O. to L.D.No. 1635/A, dated the 4th November 1952.

A.K.
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